(03)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

CRIMINAL APPEAL NO. 251 /2004

(Criminal Appeal Under section 374 (2) of Criminal Procedure Code)

APPELLANT (IN JAIL)	:	Radheshyam S/o Peelaram, aged about 30 years, occupation agriculturer, R/o village Bhaismundi, police station Narharpur, Distt. Kanker (C.G.)

05/04

Received on 08/03/04

Sri Jitendra Gupta, Adv. Advocate

R. to D. R. (J)

Flow

VERSUS

RESPONDENT	:	State of Chhattisgarh through the police station Narharpur, Distt. Kanker, (C.G.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE

XI-HC-22

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...Cr.A.:851/... सन् 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. Hon'ble Shri L.C.Bhadoo and Hon'ble Shri D.R. Deshmukh, JJ.

04.10.2005

Shri Vishnu Koshta, Counsel for the appellant.

Shri U.N.S.Deo, Govt. Advocate/Addl. Public Prosecutor with Shri Akhil Mishra, P.L. for the State.

Learned counsel for the parties submitted that instead of hearing on bail application (M.Cr.P.No.2998/2004), the appeal may be heard finally as this is small matter.

With the consent of the parties, the appeal is heard finally.

The accused Radheshyam has questioned the legality of the conviction and judgment dated 17th February 2004 passed by the First Additional Sessions Judge, Kanker in sessions trial No. 405/2003 whereby the learned Additional Sessions Judge after holding the accused-appellant guilty for the commission of offence under Section 302 I.P.C. sentenced him to under imprisonment for life and to pay a fine of Rs.1000/- and in default of payment to further undergo one year rigorous imprisonment.

The case of the prosecution is that on 16.04.2003 Shyamlal P.W.1 alongwith his wife Aaso Bai (deceased) went to the field for plucking the mango. However, Shyamlal returned home but his wife Aaso Bai stayed back. When she did not return till evening, the son of the deceased went to call his mother and he saw that his mother was lying near the mango tree in a pool of blood. He immediately returned to the house and informed his father i.e.

— 2 —

(पीछे देखिये)

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...Cr.A.251..... सन् 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Shyamlal and thereafter one Anjore and Sahadev P.W.5 went to the scene of occurrence. But Aaso Bai was not talking, they lifted Aaso Bai and brought to some distance but she died on the way.

The matter was reported by Shyamlal to the Police Station Narharpur under Ex.P.1. On receiving this report, Investigating Officer after giving notice to the Panchas, prepared Panchnama of the dead body of Aaso Bai vide Ex.P.3. The post-mortem of the dead body of the Aaso Bai was conducted by D.K.Ramteke P.W.9 along with Smt. Manju Rathore and after investigation, the charge sheet was filed in the Court of C.J.M., Kanker who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned first Additional Sessions Judge, Kanker received the case on transfer for trial.

The prosecution in order to prove the offence against the appellant-Radheshyam and his wife Santa Bai examined as many as 10 witnesses. The learned first Additional Sessions Judge recorded the statement of the accused under Section 313 of the Code of Criminal Procedure in which they pleaded innocence and denied the prosecution evidence and stated that they are innocent and have been implicated falsely. After hearing the Public Prosecutor and the counsel for the accused-appellant, learned Sessions Judge convicted and sentenced the appellant-Radheshyam in the aforesaid manner. However, the co-accused namely Santa Bai was acquitted of the charge.

-3-

(पीछे देखिये)

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.251/04 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard the learned counsel for the appellant and Shri U.N.S.Deo, counsel for the State.

Learned counsel for the accused-appellant has not disputed about the nature of death of Aaso Bai as homicidal. As far as the involvement of the accused appellant for commission of the murder of Aaso Bai is concerned, the whole case rests on the extra judicial confession made by the accused-appellant before P.W.2 Bhagbati, P.W.3 Lachhantin and P.W.4 Ramlal Uike. Believing the evidence of these three witnesses, the trial Court has convicted the accused appellant under Section 302 I.P.C. for commission of murder of Aaso Bai. As far as the evidence of P.W.2 and 4 regarding extra judicial confession made by the accused-appellant before them is concerned, their evidence is not admissible as in the cross-examination both these witnesses stated that the accused made extra judicial confession in the presence of the police. P.W.3 Lachhantin in paragraph-2 of examination-in-chief has stated that the accused appellant disclosed her that the deceased Aaso Bai was plucking mangoes and when the appellant stopped her from plucking mangoes she attacked him with the mango basket on which he assaulted Aaso Bai with the mango stick 3 – 4 times. In the cross-examination, the defence counsel has not been able to elicit any fact which makes the evidence of this witness unreliable or untrustworthy. Even though the counsel for the accused tried to elicit from her that the extra judicial confession was made by the accused in the presence of the

-4-

(पीछे देखिये)

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.251 **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

police under duress of the police but this witness categorically denied that fact, therefore, there is no material before us to disbelieve the evidence of P.W.3 Lachhantin who is an independent witness. Therefore, the fact of the involvement of the accused in assaulting the deceased with the mango stick stands proved.

The counsel for the accused-appellant argued that the deceased was sister-in-law of the accused and on a petty matter, a quarrel started and the accused assaulted with mango stick upon being attacked by the deceased with the basket of mango, and therefore, there was no intention of the accused to murder his sister-in-law and in a heat of passion the accused assaulted the deceased with the mango stick, as a result of which, she died.

The argument advanced by the learned counsel for the appellant is not without force. Nothing has been brought in evidence which shows that the accused-appellant was having any animosity against the deceased and it is admitted fact that the deceased was sister-in-law of the accused-appellant and the quarrel started on a small matter and the accused assaulted deceased with the mango stick, therefore, it can be safely inferred that while assaulting the deceased, the accused was having knowledge that by causing such injury or bodily injury he may likely to the cause the death of the deceased but there is nothing on record by which an inference can be drawn that the appellant assaulted her with an intention to commit murder of Aaso Bai.

-5-

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक Cr.A.:250/04 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

For this reason, the offence committed by the accused does not travel beyond Section 304 Part-II of the I.P.C. Looking to the relation between the deceased and the accused and the manner in which the offence was committed, we are of the considered opinion that if the accused is sentenced for five years rigorous imprisonment, ends of justice would be met.

In the result, the appeal is partly allowed. The conviction of the accused under Section 302 I.P.C. is set aside and he is acquitted of charge under Section 302 I.P.C. Instead he is convicted for commission of offence under Section 304 Part-II of the I.P.C. and sentenced to undergo rigorous imprisonment for five years. The accused shall be entitled to set off for the period of sentence which he has already undergone.

Sd/-
L.C. Bhadoo
Judge

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjam

(पीछे देखिये)